

Appeal from decision of the California State Office, Bureau of Land Management, affirming rental increase and requesting additional payments for communications site right-of-way R 05105.

Affirmed.

1. Appraisals -- Communication Sites -- Rights-of-Way: Generally

Appraisals of rights-of-way for communication sites will be upheld if there is no error in the appraisal methods used by the Bureau of Land Management and the appellant fails to show by convincing evidence that the charges are excessive.

APPEARANCES: Richard D. Christy, Jr. Esq., San Diego, California, for appellant.

OPINION BY ADMINISTRATIVE JUDGE LEWIS

This appeal is from a decision dated May 12, 1981, by the California State Office, Bureau of Land Management (BLM), affirming rental increases and requiring additional rental payments for communications site right-of-way R 05105, located on Otay Mountain in sec. 23, T. 18 S., R. 1 E., San Bernardino meridian.

The right-of-way was originally granted July 6, 1964. By letter dated April 14, 1980, BLM notified appellant of a proposed increase in rental from \$1,500 to \$3,500 per annum, effective July 6, 1980. The new rental was based on a BLM appraisal whose date of valuation was January 17, 1980.

The decision appealed from indicates that at a hearing held in the BLM office on December 4, 1980, appellant presented no evidence showing the appraisal to be in error, nor did he file such evidence thereafter, either with BLM, or with the office of the State appraiser. The decision states that on October 21, 1980, appellant paid \$1,500 for the year July 6, 1980, through July 5, 1981, and that a balance of \$2,000 remained to be paid as of the date of the decision.

Appellant contends that BLM's appraiser erred in evaluating the site as a microwave communications site without considering the market demand for such use. Appellant asserts that the appraiser, in his comparisons, placed too much emphasis on the sublease of an existing BLM lease on Otay Mountain. Appellant asserted at the hearing that this sublease, used for microwave radio communication, is unique in the area (Tr. 30). Appellant concedes that his own site could be used for microwave communication, but he contends, citing Full Circle Inc., 35 IBLA 325 (1978), that the appraisal improperly neglects to consider the likelihood of a market demand for such use.

Appellant also argues that the appraiser failed to consider the impact of interference caused by a neighboring site, did not take into account the "neighborhood" of Mt. Otay, nor the limited number of channels and frequencies available in the San Diego area.

[1] The general standard for reviewing rights-of-way appraisals is to uphold the appraisal if there is no error in the appraisal methods used by BLM and the appellant fails to show by convincing evidence that the charges are excessive. Western Slope Gas Co., 61 IBLA 57 (1981); Full Circle, Inc., supra. In the absence of compelling evidence that a BLM appraisal is erroneous, such an appraisal may be rebutted only by another appraisal or appraisals. James W. Smith, 46 IBLA 233, 235 (1980).

BLM's appraisal states that among the rights appraised was the right to utilize the site for the "propagation of radio signals," and that the degree to which the lessee utilized this right was not properly a concern of the appraisal. With respect to highest and best use, the appraisal states:

It is noted that the site being appraised has demonstrated that it is useful for a variety of communication uses. It is, therefore, clear that the subject land has a highest and best use as a communication site and that its fair market rental can best be estimated by comparing it with similar sites.

BLM's appraisal compared appellant's site to five other sites in light of the following elements:

Time - The site is appraised as of January 17, 1980, the most recent date of examination.

Location - The subject mountain has general characteristics for an extensive range of radio repeater uses.

Site Amenities - Electricity and road access are present.

Present Communication Use - The site is intensively used due to its location and "view."

Character - The subject site is at an altitude of approximately 3,572 feet. The surface ranges from rolling crest with very

steep east and west slopes. The soil is decomposed granite on bedrock. 1/

One of the comparable leases used was lease No. 28 on Mt. Woodson, about 30 miles north of Otay. This site, serving San Diego, was appraised slightly superior to Otay, excellent for repeater distribution, and valued at a \$5,000 yearly rental. Two of the other comparables, Nos. 43 and 44, are radio repeater sites in Los Angeles and Riverside counties; their rentals are \$3,050 and \$2,200, 2/ respectively. Lease No. 54, commanding the Los Angeles basin, requires a \$5,376 rental. As to comparable No. 27, the sublease on Otay Mountain, the appraisal states:

Because this lease demonstrates the actual market rent on the subject Mt. Otay it needs no adjustment except for the improvements included in the rent.

The building is 10' x 16' and contains approximately 160 sq. ft. of basic space.

Giving consideration for contribution of improvements and a margin for management and entrepreneurship the gross rent is adjusted downward by \$1,000/year for a net site rent of \$3,500 per annum is indicated.

Having reviewed the appraisal and the hearing transcript we cannot agree that the features of lease No. 27 (the sublease on Otay Mountain) were given disproportionate weight in evaluating appellant's site. The appraisal does not differentiate between microwave and radio repeater uses, nor does it categorize either of these uses as higher and better than the other. Appellant has not supported his allegation that lease No. 27 is unique in the area because it is a microwave site, or that his own site was appraised exclusively as a microwave site. Full Circle, supra, involved an appraisal which rated a site as a "broad coverage site" and mentioned various classes of communication use including TV and radio broadcasting. The Board found that the appraisal neglected to consider market potential for the use deemed to be higher and better (TV, radio broadcasting), than the existing use (2-way radio site). As already indicated, there is no such distinction in the appraisal before us, which employs data from several highly similar sites, some of which specifically mention radio repeater operations. In its appraisal BLM properly considered the features of the site rather than the needs of appellant. Appellant does not demonstrate that the data used was in any way erroneous or not relevant.

1/ The appraisal is not paginated. All references are to material in the 32 consecutive pages after the title page.

2/ Although lease number 44 which was effective Jan. 1, 1978, has a current annual rental of \$2,200 based on 5 percent of lessee's annual income, the appraiser's report indicates that such a rate is extremely beneficial to the tenant and that at a rate of "8% it computes to \$3,520 which is more in line with the market."

Appellant's remaining arguments are not pertinent to the questions of fair rental value or methods of appraisal, and the suggestion that the neighborhood of Otay Mountain was not considered is inaccurate in light of the text of the appraisal. The fact of interference was discussed at the hearing. BLM acknowledged that appellant had such a problem, but its appraiser gave his opinion that interference from another user is a question of management not properly within the purview of an appraisal (Tr. 13). As appellant observed at the hearing, the problem of interference was a longstanding one which he himself had brought to the attention of the FCC, who had investigated his complaint (TR. 50). Finally, in light of the fact that the appraiser considered comparable leases in the San Diego area, there was no error in ignoring the number of channels and frequencies available to appellant's operations assuming, of course, that all operators in the area are similarly situated. We conclude that appellant has not demonstrated error in the appraisal or that the charges are excessive.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Anne Poindexter Lewis
Administrative Judge

We concur:

C. Randall Grant, Jr.
Administrative Judge

Edward W. Stuebing
Administrative Judge

